

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3727 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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IQBAL ABDULRAZAK SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for M/S THAKKAR ASSOC. for Petitioner  
MR KC SHAH, LD. AGP for Respondents.

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 20/08/96

ORAL JUDGEMENT

1. By way of this petition under Article 226 of the Constitution of India the petitioner-detenu has brought under challenge the detention order dated 22/3/1996 rendered by the respondent no.2 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Ac, 1985 (Act No. 16 of 1985), hereinafter referred to as 'the PASA Act'.

2. The grounds on which the impugned order of

detention has been passed appear at Annexure-B to the petition. They inter-alia indicate that the petitioner by himself and with the aid of his associates has been carrying on criminal and anti-social activities of dealing in country liquor. The detaining authority has placed reliance on one prohibition case registered at Shahpur Police Station C.R. No. 115/96 u/Ss. 66B, 65E n and 81 of the Bombay Prohibition Act in respect of 480 litres of country liquor. The investigation for the said offence is in progress.

3. It has been recited that the detenu's anti-social activity tends to obstruct the maintenance of public order and in support of the said conclusion statements of four witnesses have been relied upon. They indicate about two incidents, one occurring on 10/3/1996 and second occurring on 12/3/1996. Both the incidents indicate threatening administered to the concerned witnesses, their beating in the public place and rushing at the people collected at the place with knife, leading to the dispersing of the people collected on such occasions.

4. It is on the aforesaid incidents that the detaining authority has passed the impugned order of detention while also relying upon the aforesaid case lodged against the petitioner. The petitioner has been stamped as a boot-legger within the meaning of section 2(b) of the PASA Act.

5. I have heard the learned advocate for the petitioner and the Ld. A.G.P. for the State. The petitioner has challenged the aforesaid order of detention on number of grounds inter-alia on the ground that there is no material to indicate that the detenu's conduct would show that he is habitually engaged in the anti-social activities which can be said to be prejudicial to the maintenance of public order. This is a case of individual incidents affecting law and order and in the facts of the case would not amount to leading to conclusion that the same would affect public order. Reliance has been placed on the following decision of the Apex Court :-

Mustakmiya Jabbarmiya Shaikh v/s. M.M. Mehta,  
C.P. , reported in 1995 (2) G.L.R. 1268, where the incidents were quoted in paras: 11 and 12 of the citation and it has been submitted that facts of the present case run almost parallel to the facts before the Apex Court in Mustakmiya's case (supra).

6. What has been said by the Apex Court in paras. 11 and 12 of Mustakmiya's case (supra) has been relied upon on behalf of the petitioner particularly in view of the fact that the petitioner has been acquitted of the offences charged against him in the aforesaid case. The facts with regard to such acquittal appear in para. 4 (r) of the petition which read as under :-

'The petitioner respectfully says that the petitioner was falsely involved in connection with the offence registered at C.R. No. 110/95. That the name of the petitioner was not mentioned in anywhere in the grounds of detention. That the materials in the form of statements of various persons are relied on by detaining authority for passing the order of detention. That there is no material connecting the petitioner with the alleged offence. That the petitioner, subsequently acquitted by the Metropolitan Magistrate, Ahmedabad vide its judgment and order dated 29/3/1996. That the petitioner and other 14 accused persons were acquitted by the Hon'ble Trial Court.

That the house from which alleged stock of liquor was found out was belonging to one Faridbhai Pirbhai Mansuri who stated before the trial Court that he purchased the said house and given on rent to the petitioner on 12/8/95. That rent note was also executed. However, there was some dispute with respect to rent and the tax of the house and, therefore, the petitioner had not gone to reside in the said house. The only allegation attributed to the petitioner was that the petitioner had given his house for storing the stock of liquor. Under the circumstances, the subjective satisfaction of the detaining authority gets vitiated as the detaining authority has not considered all the materials available to it before passing the order of detention. Therefore, the order of detention is required to be quashed and set aside.'

7. In reply Mr. K.C. Shah, Ld. A.G.P. for the State has relied upon a decision in the case of Mrs. Harpreet Kaur Harvinder Singh Bedi v/s. State of Maharashtra and anr., reported in AIR 1992 SC 979. Comparing the facts of the present case with the facts in the case before the Supreme Court, it clearly appears that the decision in Mrs. Harpreet Kaur's case (supra) would not be applicable.

8. There are other grounds of challenge levelled against the impugned order of detention. However, in view of the fact that the petitioner would succeed directly on the strength of decision of Mustakmiya's case (supra), it is not necessary to deal with the other grounds. Hence, following order is passed :-

9. The impugned order of detention is hereby quashed and set aside. The petitioner-detenu-Iqbal Abdulrazak Shaikh shall be fortherwith set at liberty if he is not required to be detained in any other case. Rule made absolute accordingly.

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